

**(2014) 10 P&H CK 0016**

**In the Punjab And Haryana At Chandigarh**

**Case No : Civil Revision No. 2414 of 2012 (O and M)**

Rajwant Kaur

APPELLANT

Vs

Gurnam Kaur and Others

RESPONDENT

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**Date of Decision : 16-10-2014**

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 85, Order 21 Rule 86

**Citation : (2015) 178 PLR 40**

**Hon'ble Judges : Bharat Bhushan Parsoon, J**

**Bench : Single Bench**

**Advocate : Varun Jain, Advocate for the Appellant;**

**Final Decision : Disposed off**

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## **Judgement**

Dr. Bharat Bhushan Parsoon, J.

1. In execution of decree dated 18.9.2000, share of judgment-debtor in the land was put to auction on 30.5.2003 which was purchased for total sale consideration of Rs. 2,45,000/- and Rs. 61,205/-, being 1/4th share of the said sale consideration was deposited at the fall of the hammer whereas remaining amount of Rs. 1,83,750/- was to be deposited on 29.6.2003 by the petitioner-auction purchaser. Perusal of the paper book reveals that the auction purchaser did not deposit the remaining amount within the stipulated time and thus, invited the penal action of cancellation of auction sale. Provision of Rule 85 of Order XXI for ready reference is appended as below:

"85. Time for payment in full of purchase-money.- The full amount of purchase-money payable shall be paid by the purchaser into Court before the Court closes on the fifteenth day from the sale of the property:

Provided that, in calculating the amount to be so paid into Court, the purchaser shall have the advantage of any set off to which he may be entitled under rule 72."

2. It is clearly evident from this provision that it is mandatory in nature and rest of the 75% of the total auction sale price was to be deposited within 15 days and no exception could be created.

3. Counsel for the petitioner concedes that the payment was not made within the stipulated time but he had sought extension of time which was neither granted nor refused and thus, he was under the impression that concession was likely to be granted and hence has unsuccessfully tried to explain the late deposit of the remaining amount of 75%. In his application (Annexure P-1) made for confirmation of sale and issuance of sale certificate, there is a clear admission that instead of depositing the remaining 75% of the sale amount within 15 days of the auction sale, he had made such deposit very late and thus, had violated the mandatory provisions of Rule 85 of Order XXI CPC, to his knowledge and to his prejudice as well.

4. Provision of Rule 86 of Order XXI CPC further explains the procedure in default of payment. Rule 86 of Order XXI for ready reference is appended as below:

"86. Procedure in default of payment.- In default of payment within the period mentioned in the last preceding rule, the deposit may, if the Court thinks fit, after defraying the expenses of the sale, be forfeited to the Government, and the property shall be re-sold, and the defaulting purchase shall forfeit all claim to the property or to any part of the sum for which it may subsequently be sold."

5. Counsel for the petitioner claims that when the deposit of 75% of the sale consideration was made subsequently, the same being beyond limitation and the sale had thus not been confirmed in his favour, the said amount could not be forfeited and only 25% deposited earlier would stand forfeited.

6. The deposit made subsequently is also qua the auction sale but having been made beyond the statutory time provided for the same, did not entitle the auction purchaser the benefit of confirmation of sale in his favour and he forfeits all his claims to the property or to any part of the deposit so made but since the deposit of 75% was made beyond the statutory period and is not a payment validly and legally made qua the auction sale, after deducting the expenses of the auction sale etc., remaining therefrom is to be returned to the petitioner-auction purchaser. Since the deposit was made late and fault lies with the petitioner himself, he would not be entitled to any interest amount on the deposited amount.

7. So far as deposit of 25% already made by him at the time of fall of hammer, that was rightly absolutely forfeited in favour of the State. The Executing Court would calculate the expenses and deducting the same from the deposit subsequently made, would return the residue without any interest whatsoever. With the above observations, the petition is disposed of accordingly.